



DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 547

Democratic Republic of the Congo Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is adopting a final rule amending the Democratic Republic of the Congo Sanctions Regulations to implement Executive Order 13671 of July 8, 2014 ("Taking Additional Steps to Address the National Emergency With Respect to the Conflict in the Democratic Republic of the Congo"). This rule also incorporates other technical and conforming changes.

DATES: *Effective:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel: 202-622-4855; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202-622-2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available from OFAC's website (www.treasury.gov/ofac).

Background

On May 28, 2009, OFAC issued the Democratic Republic of the Congo Sanctions Regulations, 31 CFR part 547 (the "Regulations") (74 FR 25439, May 28, 2009) to implement Executive Order 13413 of October 27, 2006 (71 FR 64105, October 31, 2006) (E.O. 13413).

Executive Order 13671

On July 8, 2014, the President, invoking the authority of, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) (IEEPA) and section 5 of the United Nations Participation Act (22 U.S.C. 287c) (UNPA), issued Executive Order 13671 (79 FR 39949, July 10, 2014) (E.O. 13671). In E.O. 13671, the President amended E.O. 13413 to take additional steps to deal with the national emergency with respect to the situation in or in relation to the Democratic Republic of the Congo declared in E.O. 13413, in view of multiple United Nations Security Council Resolutions, including Resolution 2136 of January 30, 2014, and in light of the continuation of activities that threaten the peace, security, or stability of the Democratic Republic of the Congo and the surrounding region, including operations by armed groups, widespread violence and atrocities, human rights abuses, recruitment and use of child soldiers, attacks on peacekeepers, obstruction of humanitarian operations, and exploitation of natural resources to finance persons engaged in these activities.

E.O. 13671 amends several sections of E.O. 13413 but does not amend the Annex to E.O. 13413 as originally issued. Section 1 of E.O. 13671 amends E.O. 13413 by replacing subsection 1(a) of E.O. 13413 in its entirety. New subsection 1(a) of E.O. 13413 as amended by E.O. 13671 (“amended E.O. 13413”)¹ blocks all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person, of: (i) the persons listed in the Annex to amended E.O. 13413; and (ii) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) to be a political or military leader of a foreign armed group operating in the Democratic Republic of the Congo that impedes the disarmament, demobilization, voluntary repatriation, resettlement, or reintegration of combatants;

(B) to be a political or military leader of a Congolese armed group that impedes the disarmament, demobilization, voluntary repatriation, resettlement, or reintegration of combatants;

(C) to be responsible for or complicit in, or to have engaged in, directly or indirectly, any of the following in or in relation to the Democratic Republic of the Congo:

(1) actions or policies that threaten the peace, security, or stability of the Democratic Republic of the Congo; (2) actions or policies that undermine democratic processes or institutions in the Democratic Republic of the Congo; (3) the targeting of women, children, or any civilians through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, forced displacement, or

¹ For the purposes of this subsection, the term “amended E.O. 13413” refers to E.O. 13413 as amended by E.O. 13671. Because E.O. 13671 did not amend the Annex, the term “Annex to amended E.O. 13413” refers to the Annex as originally issued to E.O. 13413.

attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute a serious abuse or violation of human rights or a violation of international humanitarian law; (4) the use or recruitment of children by armed groups or armed forces in the context of the conflict in the Democratic Republic of the Congo; (5) the obstruction of the delivery or distribution of, or access to, humanitarian assistance; (6) attacks against United Nations missions, international security presences, or other peacekeeping operations; or (7) support to persons, including armed groups, involved in activities that threaten the peace, security, or stability of the Democratic Republic of the Congo or that undermine democratic processes or institutions in the Democratic Republic of the Congo, through the illicit trade in natural resources of the Democratic Republic of the Congo;

(D) except where intended for the authorized support of humanitarian activities or the authorized use by or support of peacekeeping, international, or government forces, to have directly or indirectly supplied, sold, or transferred to the Democratic Republic of the Congo, or been the recipient in the territory of the Democratic Republic of the Congo, of arms and related materiel, including military aircraft and equipment, or advice, training, or assistance, including financing and financial assistance, related to military activities;

(E) to be a leader of (i) an entity, including any armed group, that has, or whose members have, engaged in any of the activities described in paragraphs (A) through (D) above or (ii) an entity whose property and interests in property are blocked pursuant to amended E.O. 13413;

(F) to have materially assisted, sponsored, or provided financial, material, logistical, or technological support for, or goods or services in support of: (i) any of the

activities described in (A) through (D) above; or (ii) any person whose property and interests in property are blocked pursuant to amended E.O. 13413; or

(G) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to amended E.O. 13413.

The property and interests in property of the persons described above may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

Section 2 of E.O. 13671 adds new subsection (d) to section 1 of E.O. 13413. This new subsection provides that the prohibitions in subsection 1(a) of amended E.O. 13413 apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to amended E.O. 13413, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of the order.

Section 3 of E.O. 13671 amends section 2 of E.O. 13413 by adding a prohibition. Section 2 of E.O. 13413 prohibited any transaction by a U.S. person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in E.O. 13413, as well as any conspiracy formed to violate such prohibitions. Section 3 of E.O. 13671 adds a prohibition on causing a violation of any prohibitions set forth in amended E.O. 13413 to the existing prohibitions.

Section 4 of E.O. 13671 authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA as may be necessary to carry out the purposes of E.O. 13671 and amended E.O. 13413.

Section 4 of E.O. 13671 also provides that the Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the U.S. government.

Current Regulatory Action

This rule amends the Regulations to implement the relevant provisions of E.O. 13671, as well as to update certain provisions and to make other technical and conforming changes. OFAC is revising and republishing in its entirety subpart B of the Regulations, which sets forth the prohibitions contained in sections 1 and 2 of amended E.O. 13413. *See, e.g.*, §§ 547.201 and 547.205. In particular, OFAC is revising § 547.201 of subpart B to incorporate the new designation criteria provided for in E.O. 13671. OFAC is also adding § 547.206 to subpart B to clarify which transactions are exempt from the prohibitions in this part.

This rule also amends several sections in subpart C, which defines key terms used throughout the Regulations. New § 547.300 is being added to clarify that the definitions contained in subpart C apply throughout the entire part, and §§ 547.314 and 547.315 are being added to define key terms used in the Regulations. Also, certain existing definitions in subpart C are being updated or revised to take account of new provisions and to provide greater clarity with respect to the terms being used.

This rule also revises and republishes in its entirety subpart D, which contains interpretive sections regarding the Regulations. Section 547.411 of subpart D is being amended to clarify that the property and interests in property of an entity are blocked if the entity is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more persons whose property and interests in property are blocked, whether or not the entity itself is listed in or designated pursuant to amended

E.O. 13413 or incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). Other sections within subpart D are being amended to reflect current OFAC interpretations.

Transactions otherwise prohibited by the Regulations but found to be consistent with U.S. policy may be authorized by one of the general licenses contained in subpart E of the Regulations or by a specific license issued pursuant to the procedures described in subpart E of 31 CFR part 501. This rule also amends subpart E of the Regulations. In particular, a general license is being added in § 547.508, authorizing payments from outside the United States for the provision of legal services authorized in § 547.507. The general license authorizing certain emergency medical services that was formerly at § 547.508 has been moved to § 547.509 and updated to reflect current licensing policies. Updates to reflect current licensing policies have also been made to several other general licenses. General licenses and statements of licensing policy relating to this part also may be available through the Democratic Republic of the Congo sanctions page on OFAC's website: www.treasury.gov/ofac.

This rule revises subpart G of the Regulations and republishes it in its entirety. Subpart G of the Regulations describes the civil and criminal penalties applicable to violations of the Regulations, as well as the procedures governing the potential imposition of a civil monetary penalty or issuance of a Finding of Violation. Subpart G also refers to appendix A of part 501 for a more complete description of these procedures. Finally, this rule updates the delegation of authority by the Secretary of the Treasury in subpart H of the Regulations.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of Executive Order 13771 are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601-612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the “Reporting, Procedures and Penalties Regulations”). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505-0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 547

Administrative practice and procedure, Banks, banking, Blocking of assets, Credit, Democratic Republic of the Congo, Foreign Trade, Penalties, Reporting and recordkeeping requirements, Securities, Services.

For the reasons set forth in the preamble, the Department of the Treasury’s Office of Foreign Assets Control amends 31 CFR part 547 as follows:

PART 547—DEMOCRATIC REPUBLIC OF THE CONGO SANCTIONS REGULATIONS

1. Revise the authority citation for part 547 to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601-1651, 1701-1706; 22 U.S.C. 287c; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110-96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13413, 71 FR 64105, 3 CFR, 2006 Comp., p. 247; E.O. 13671, 79 FR 39949, 3 CFR, 2015 Comp., p. 280.

2. Revise subpart B to read as follows:

Subpart B—Prohibitions

Sec.

547.201 Prohibited transactions involving blocked property.

547.202 Effect of transfers violating the provisions of this part.

547.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

547.204 Expenses of maintaining blocked tangible property; liquidation of blocked property.

547.205 Evasions; attempts; causing violations; conspiracies.

547.206 Exempt transactions.

§ 547.201 Prohibited transactions involving blocked property.

(a) All property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) The persons listed in the Annex to Executive Order 13413 of October 27, 2006; and

(2) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) To be a political or military leader of a foreign armed group operating in the Democratic Republic of the Congo that impedes the disarmament, demobilization, voluntary repatriation, resettlement, or reintegration of combatants;

(ii) To be a political or military leader of a Congolese armed group that impedes the disarmament, demobilization, voluntary repatriation, resettlement, or reintegration of combatants;

(iii) To be responsible for or complicit in, or to have engaged in, directly or indirectly, any of the following in or in relation to the Democratic Republic of the Congo:

(A) Actions or policies that threaten the peace, security, or stability of the Democratic Republic of the Congo;

(B) Actions or policies that undermine democratic processes or institutions in the Democratic Republic of the Congo;

(C) The targeting of women, children, or any civilians through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute a serious abuse or violation of human rights or a violation of international humanitarian law;

(D) The use or recruitment of children by armed groups or armed forces in the context of the conflict in the Democratic Republic of the Congo;

(E) The obstruction of the delivery or distribution of, or access to, humanitarian assistance;

(F) Attacks against United Nations missions, international security presences, or other peacekeeping operations; or

(G) Support to persons, including armed groups, involved in activities that threaten the peace, security, or stability of the Democratic Republic of the Congo or that undermine democratic processes or institutions in the Democratic Republic of the Congo, through the illicit trade in natural resources of the Democratic Republic of the Congo;

(iv) Except where intended for the authorized support of humanitarian activities or the authorized use by or support of peacekeeping, international, or government forces, to have directly or indirectly supplied, sold, or transferred to the Democratic Republic of the Congo, or been the recipient in the territory of the Democratic Republic of the Congo of, arms and related materiel, including military aircraft and equipment, or advice, training, or assistance, including financing and financial assistance, related to military activities;

(v) To be a leader of:

(A) An entity, including any armed group, that has, or whose members have, engaged in any of the activities described in paragraphs (a)(2)(i) through (iv) of this section; or

(B) An entity whose property and interests in property are blocked pursuant to paragraph (a) of this section;

(vi) To have materially assisted, sponsored, or provided financial, material, logistical, or technological support for, or goods or services in support of any of the activities described in paragraphs (a)(2)(i) through (iv) of this section or any person

whose property and interests in property are blocked pursuant to paragraph (a) of this section; or

(vii) To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

Note 1 to paragraph (a): The names of persons listed in or designated pursuant to Executive Order 13413, both as originally issued and as amended by Executive Order 13671, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the *Federal Register* and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) with the identifier "[DRCONGO]." The SDN List is accessible through the following page on OFAC's website: www.treasury.gov/sdn. Additional information pertaining to the SDN List can be found in appendix A to this chapter. See § 547.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

Note 2 to paragraph (a): The International Emergency Economic Powers Act (50 U.S.C. 1701-1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the *Federal Register* and incorporated into the SDN List with the identifier "[BPI-DRCONGO]."

Note 3 to paragraph (a): Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds

that they believe were blocked due to mistaken identity, and administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include prohibitions on the following transactions:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless authorized by this part or by a specific license expressly referring to this part, any dealing in securities (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any securities on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such securities may have or might appear to have assigned, transferred, or otherwise disposed of the securities.

(d) The prohibitions in paragraph (a) of this section apply except to the extent provided by regulations, orders, directives, or licenses that may be issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

§ 547.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 547.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or interests in property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interests in property blocked pursuant to § 547.201(a), unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, a license or other authorization issued by OFAC before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained

(and as to such person only) in cases in which such person is able to establish to the satisfaction of OFAC each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with OFAC a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by OFAC; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

Note 1 to paragraph (d): The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property and interests in property blocked pursuant to § 547.201(a).

§ 547.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (e) or (f) of this section, or as otherwise directed or authorized by OFAC, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 547.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 547.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 547.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as real or personal property, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, OFAC may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 547.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 547.204 Expenses of maintaining blocked tangible property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of tangible property blocked pursuant to § 547.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 547.201(a) may, in the discretion of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 547.205 Evasions; attempts; causing violations; conspiracies.

(a) Any transaction on or after the effective date that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

§ 547.206 Exempt transactions.

(a) *United Nations Participation Act*. The exemptions described in this section do not apply to transactions involving property or interests in property of persons whose property and interests in property are blocked pursuant to the authority of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (UNPA).

Note 1 to paragraph (a): Persons whose property and interests in property are blocked pursuant to the authority of the UNPA include those listed on *both* OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) and the Consolidated United Nations Security Council Sanctions List (UN List) (see <https://www.un.org>) as well as persons listed on the SDN List for being owned or controlled by, or acting for or on behalf of, persons listed on *both* the SDN List and the UN List.

(b) *Personal communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

(c) *Information or informational materials.* (1) The prohibitions contained in this part do not apply to the importation from any country and the exportation to any country of any information or informational materials, as defined in § 547.314, whether commercial or otherwise, regardless of format or medium of transmission.

(2) This section does not exempt from regulation transactions related to information or informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of information or informational materials, or to the provision of marketing and business consulting services. Such prohibited transactions include payment of advances for information or informational materials not yet created and completed (with the exception of prepaid subscriptions for widely circulated magazines and other periodical publications); provision of services to market, produce or co-produce, create, or assist in the creation of information or informational materials; and payment of royalties with respect to income

received for enhancements or alterations made by U.S. persons to such information or informational materials.

(3) This section does not exempt transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730 through 774, or to the exportation of goods (including software) or technology for use in the transmission of any data, or to the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) for use in the transmission of any data. The exportation of such items or services and the provision, sale, or leasing of such capacity or facilities to a person whose property and interests in property are blocked pursuant to § 547.201(a) are prohibited.

(d) *Travel*. The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation or exportation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

Subpart C—General Definitions

3. Add § 547.300 to read as follows:

§ 547.300 Applicability of definitions.

The definitions in this subpart apply throughout the entire part.

§ 547.301 [Amended]

4. In the heading and introductory text of § 547.301, remove “or any” and add in its place “and”.

5. Revise § 547.302 to read as follows:

§ 547.302 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 547.201 held in the name of a person whose property and interests in property are blocked pursuant to § 547.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to a license or other authorization from OFAC expressly authorizing such action.

Note 1 to § 547.302: See § 547.411 concerning the blocked status of property and interests in property of an entity that is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more persons whose property and interests in property are blocked pursuant to § 547.201(a).

6. Revise § 547.303 to read as follows:

§ 547.303 Effective date.

(a) The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(1) With respect to a person whose property and interests in property are blocked pursuant to § 547.201(a)(1), 12:01 a.m. eastern standard time on October 30, 2006; and

(2) With respect to a person whose property and interests in property are otherwise blocked pursuant to § 547.201(a), the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

(b) For the purposes of this section, *constructive notice* is the date that a notice of the blocking of the relevant person's property and interests in property is published in the *Federal Register*.

7. Revise § 547.306 to read as follows:

§ 547.306 Licenses; general and specific.

(a) Except as otherwise provided in this part, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part or made available on OFAC's website: www.treasury.gov/ofac.

(c) The term *specific license* means any license or authorization issued pursuant to this part, but not set forth in subpart E of this part or made available on OFAC's website: www.treasury.gov/ofac.

Note 1 to § 547.306: See § 501.801 of this chapter on licensing procedures.

8. Revise § 547.311 to read as follows:

§ 547.311 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or other extensions of credit, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions, banks, savings banks, trust companies, securities brokers and dealers, futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and

commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

9. Revise § 547.313 to read as follows:

§ 547.313 Financial, material, logistical, or technological support.

The term *financial, material, logistical, or technological support*, as used in § 547.201(a)(2)(vi), means any property, tangible or intangible, including currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. “Technologies” as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

10. Add § 547.314 to read as follows:

§ 547.314 Information or informational materials.

(a)(1) The term *information or informational materials* includes publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

(2) To be considered information or informational materials, artworks must be classified under heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information or informational materials*, with respect to exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (EAA), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

11. Add § 547.315 to read as follows:

§ 547.315 OFAC.

The term *OFAC* means the Department of the Treasury’s Office of Foreign Assets Control.

12. Revise subpart D to read as follows:

Subpart D—Interpretations

Sec.

547.401 Reference to amended sections.

547.402 Effect of amendment.

547.403 Termination and acquisition of an interest in blocked property.

547.404 Transactions ordinarily incident to a licensed transaction.

547.405 Provision of services.

547.406 Offshore transactions involving blocked property.

547.407 Payments from blocked accounts to satisfy obligations prohibited.

547.408 Charitable contributions.

547.409 Credit extended and cards issued by financial institutions to a person whose property and interests in property are blocked.

547.410 Setoffs prohibited.

547.411 Entities owned by one or more persons whose property and interests in property are blocked.

§ 547.401 Reference to amended sections.

(a) Reference to any section in this part is a reference to the same as currently amended, unless the reference includes a specific date. *See* 44 U.S.C. 1510.

(b) Reference to any ruling, order, instruction, direction, or license issued pursuant to this part is a reference to the same as currently amended unless otherwise so specified.

§ 547.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by OFAC does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 547.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person whose property and interests in property are blocked pursuant to § 547.201(a), such property shall no longer be deemed to be property blocked pursuant to § 547.201(a), unless there exists in the property another interest that is blocked pursuant to § 547.201(a), the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 547.201(a), such property shall be deemed to be property in which such person has an interest and therefore blocked.

§ 547.404 Transactions ordinarily incident to a licensed transaction.

(a) Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(1) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 547.201(a); or

(2) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(b) For example, a license authorizing a person to complete a securities sale involving Company A, whose property and interests in property are blocked pursuant to § 547.201(a), also authorizes other persons to engage in activities that are ordinarily

incident and necessary to complete the sale, including transactions by the buyer, broker, transfer agents, and banks, provided that such other persons are not themselves persons whose property and interests in property are blocked pursuant to § 547.201(a).

§ 547.405 Provision of services.

(a) The prohibitions on transactions contained in § 547.201 apply to services performed in the United States or by U.S. persons, wherever located, including by a foreign branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property and interests in property are blocked pursuant to § 547.201(a); or

(2) With respect to property interests of any person whose property and interests in property are blocked pursuant to § 547.201(a).

(b) For example, U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property and interests in property are blocked pursuant to § 547.201(a).

Note 1 to § 547.405: See §§ 547.507 and 547.509 on licensing policy with regard to the provision of certain legal and emergency medical services.

§ 547.406 Offshore transactions involving blocked property.

The prohibitions in § 547.201 on transactions or dealings involving blocked property, as defined in § 547.302, apply to transactions by any U.S. person in a location outside the United States.

§ 547.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 547.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

Note 1 to § 547.407: *See also* § 547.502(e), which provides that no license or other authorization contained in or issued pursuant to this part authorizes transfers of or payments from blocked property or debits to blocked accounts unless the license or other authorization explicitly authorizes the transfer of or payment from blocked property or the debit to a blocked account.

§ 547.408 Charitable contributions.

Unless specifically authorized by OFAC pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing, or medicine, may be made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 547.201(a). For the purposes of this part, a contribution is made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 547.201(a) if made by, to, or in the name of, or received from or in the name of, such a person; if made by, to, or in the name of, or received from or in the name of, an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person, or the receipt of contributions from such a person.

§ 547.409 Credit extended and cards issued by financial institutions to a person whose property and interests in property are blocked.

The prohibition in § 547.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including charge cards, debit cards, or other credit facilities issued by a financial institution to a person whose property and interests in property are blocked pursuant to § 547.201(a).

§ 547.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 547.201 if effected after the effective date.

§ 547.411 Entities owned by one or more persons whose property and interests in property are blocked.

Persons whose property and interests in property are blocked pursuant to § 547.201(a) have an interest in all property and interests in property of an entity in which such persons directly or indirectly own, whether individually or in the aggregate, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 547.201(a), regardless of whether the name of the entity is incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

13. Revise § 547.501 to read as follows:

§ 547.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. General licenses and statements of licensing policy relating to this part also may be available through the Democratic Republic of the Congo sanctions page on OFAC's website: www.treasury.gov/ofac.

14. Revise § 547.502 to read as follows:

§ 547.502 Effect of license or other authorization.

(a) No license or other authorization contained in this part, or otherwise issued by OFAC, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by OFAC and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other part of this chapter unless the regulation, ruling, instruction, or license specifically refers to such part.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an

authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property that would not otherwise exist under ordinary principles of law.

(d) Nothing contained in this part shall be construed to supersede the requirements established under any other provision of law or to relieve a person from any requirement to obtain a license or other authorization from another department or agency of the U.S. Government in compliance with applicable laws and regulations subject to the jurisdiction of that department or agency. For example, exports of goods, services, or technical data that are not prohibited by this part or that do not require a license by OFAC nevertheless may require authorization by the U.S. Department of Commerce, the U.S. Department of State, or other agencies of the U.S. Government.

(e) No license or other authorization contained in or issued pursuant to this part authorizes transfers of or payments from blocked property or debits to blocked accounts unless the license or other authorization explicitly authorizes the transfer of or payment from blocked property or the debit to a blocked account.

(f) Any payment relating to a transaction authorized in or pursuant to this part that is routed through the U.S. financial system should reference the relevant OFAC general or specific license authorizing the payment to avoid the blocking or rejection of the transfer.

15. Revise § 547.503 to read as follows:

§ 547.503 Exclusion from licenses.

OFAC reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. OFAC also reserves the right to restrict the applicability of any license to particular

persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

16. Revise § 547.507 to read as follows:

§ 547.507 Provision of certain legal services.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 547.201(a) or any further Executive orders relating to the national emergency declared in E.O. 13413 of October 27, 2006, is authorized, provided that receipt of payment of professional fees and reimbursement of incurred expenses must be authorized: pursuant to § 547.508, which authorizes certain payments for legal services from funds originating outside the United States; via specific license; or otherwise pursuant to this part:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(4) Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 547.201(a) or any further Executive orders relating to the national emergency declared in E.O. 13413 of October 27, 2006, not otherwise authorized in this part, requires the issuance of a specific license.

(c) U.S. persons do not need to obtain specific authorization to provide related services, such as making filings and providing other administrative services, that are ordinarily incident to the provision of services authorized by paragraph (a) of this section. Additionally, U.S. persons who provide services authorized by paragraph (a) of this section do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. See § 510.404.

(d) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 547.201(a) or any further Executive orders relating to the national emergency declared in E.O. 13413 of October 27, 2006, is prohibited unless licensed pursuant to this part.

Note 1 to § 547.507: Pursuant to part 501, subpart E, of this chapter, U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from OFAC to authorize the release of certain blocked funds for the payment of professional

fees and reimbursement of incurred expenses for the provision of such legal services where alternative funding sources are not available. For more information, see OFAC's *Guidance on the Release of Limited Amounts of Blocked Funds for Payment of Legal Fees and Costs Incurred in Challenging the Blocking of U.S. Persons in Administrative or Civil Proceedings*, which is available on OFAC's website at: www.treasury.gov/ofac.

§ 547.508 [Redesignated as § 547.509]

17. Redesignate § 547.508 as § 547.509.

18. Add new § 547.508 to read as follows:

§ 547.508 Payments for legal services from funds originating outside the United States.

(a) *Professional fees and incurred expenses.* (1) Receipt of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 547.507(a) to or on behalf of any person whose property and interests in property are blocked pursuant to § 547.201 or any further Executive orders relating to the national emergency declared in E.O. 13413 of October 27, 2006, is authorized from funds originating outside the United States, provided that the funds do not originate from:

(i) A source within the United States;

(ii) Any source, wherever located, within the possession or control of a U.S. person;

or

(iii) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 547.507(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order or statute.

(2) Nothing in this paragraph (a) authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 547.201(a), any other part of this chapter, or any Executive order has an interest.

(b) *Reports.* (1) U.S. persons who receive payments pursuant to paragraph (a) of this section must submit annual reports no later than 30 days following the end of the calendar year during which the payments were received providing information on the funds received. Such reports shall specify:

(i) The individual or entity from whom the funds originated and the amount of funds received; and

(ii) If applicable:

(A) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(B) A general description of the services provided; and

(C) The amount of funds paid in connection with such services.

(2) The reports, which must reference this section, are to be submitted to OFAC using one of the following methods:

(i) Email: (preferred method) OFAC.Regulations.Reports@treasury.gov; or

(ii) U.S. mail: OFAC Regulations Reports, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Freedman's Bank Building, Washington, DC 20220.

19. Revise newly redesignated § 547.509 to read as follows:

§ 547.509 Emergency medical services.

The provision and receipt of nonscheduled emergency medical services that are otherwise prohibited by this part or any further Executive orders relating to the national emergency declared in Executive Order 13413 of October 27, 2006 are authorized.

20. Revise subpart G to read as follows:

Subpart G—Penalties and Finding of Violation

Sec.

547.701 Penalties.

547.702 Pre-Penalty Notice; settlement.

547.703 Penalty imposition.

547.704 Administrative collection; referral to United States Department of Justice.

547.705 Finding of Violation.

§ 547.701 Penalties.

(a) Section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (IEEPA) is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

Note 1 to paragraph (a)(1): IEEPA provides for a maximum civil penalty not to exceed the greater of \$295,141 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than \$1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b)(1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Pursuant to 18 U.S.C. 1001, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, imprisoned, or both.

(d) Section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (UNPA) provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than \$10,000 and, if a natural person, may also be imprisoned for not more than 10 years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both and any property,

funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States.

(e) Violations involving transactions described at section 203(b)(1), (3), and (4) of IEIPA shall be subject only to the penalties set forth in paragraph (d) of this section.

(f) Violations of this part may also be subject to other applicable laws.

§ 547.702 Pre-Penalty Notice; settlement.

(a) *When required.* If OFAC has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) and determines that a civil monetary penalty is warranted, OFAC will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see appendix A to part 501 of this chapter.

(b) *Response—(1) Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to OFAC. For a description of the information that should be included in such a response, see appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within 30 days as set forth in paragraphs (b)(2)(i) and (ii) of this section. The failure to submit a response within 30 days shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by OFAC, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of OFAC, only upon specific request to OFAC.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and include the OFAC identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to OFAC's Office of Compliance and Enforcement by mail or courier and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) *Settlement*. Settlement discussion may be initiated by OFAC, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see appendix A to part 501 of this chapter.

(d) *Guidelines*. Guidelines for the imposition or settlement of civil penalties by OFAC are contained in appendix A to part 501 of this chapter.

(e) *Representation*. A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with OFAC prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 547.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, OFAC determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, OFAC may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

§ 547.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to OFAC, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United

States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

§ 547.705 Finding of Violation

(a) *When issued.* (1) OFAC may issue an initial Finding of Violation that identifies a violation if OFAC:

(i) Determines that there has occurred a violation of any provision of this part, or a violation of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706);

(ii) Considers it important to document the occurrence of a violation; and

(iii) Based on the Guidelines contained in appendix A to part 501 of this chapter, concludes that an administrative response is warranted but that a civil monetary penalty is not the most appropriate response.

(2) An initial Finding of Violation shall be in writing and may be issued whether or not another agency has taken any action with respect to the matter. For additional details concerning issuance of a Finding of Violation, see appendix A to part 501 of this chapter.

(b) *Response*—(1) *Right to respond.* An alleged violator has the right to contest an initial Finding of Violation by providing a written response to OFAC.

(2) *Deadline for response; Default determination.* A response to an initial Finding of Violation must be made within 30 days as set forth in paragraphs (b)(2)(i) and (ii) of this section. The failure to submit a response within 30 days shall be deemed to be

a waiver of the right to respond, and the initial Finding of Violation will become final and will constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

(i) *Computation of time for response.* A response to an initial Finding of Violation must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the initial Finding of Violation was served. If the initial Finding of Violation was personally delivered by a non-U.S. Postal Service agent authorized by OFAC, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of OFAC, only upon specific request to OFAC.

(3) *Form and method of response.* A response to an initial Finding of Violation need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, contain information sufficient to indicate that it is in response to the initial Finding of Violation, and include the OFAC identification number listed on the initial Finding of Violation. A copy of the written response may be sent by facsimile, but the original also must be sent to OFAC by mail or courier and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(4) *Information that should be included in response.* Any response should set forth in detail why the alleged violator either believes that a violation of the regulations

did not occur and/or why a Finding of Violation is otherwise unwarranted under the circumstances, with reference to the General Factors Affecting Administrative Action set forth in the Guidelines contained in appendix A to part 501 of this chapter. The response should include all documentary or other evidence available to the alleged violator that supports the arguments set forth in the response. OFAC will consider all relevant materials submitted in the response.

(c) Determination—(1) Determination that a Finding of Violation is warranted.

If, after considering the response, OFAC determines that a final Finding of Violation should be issued, OFAC will issue a final Finding of Violation that will inform the violator of its decision. A final Finding of Violation shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

(2) Determination that a Finding of Violation is not warranted. If, after considering the response, OFAC determines a Finding of Violation is not warranted, then OFAC will inform the alleged violator of its decision not to issue a final Finding of Violation.

Note to paragraph (c)(2): A determination by OFAC that a final Finding of Violation is not warranted does not preclude OFAC from pursuing other enforcement actions consistent with the Guidelines contained in appendix A to part 501 of this chapter.

(d) Representation. A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with OFAC prior to a written submission regarding the specific alleged violations contained in the initial Finding of

Violation must be preceded by a written letter of representation, unless the initial Finding of Violation was served upon the alleged violator in care of the representative.

Subpart H—Procedures

21. Revise § 547.802 to read as follows:

§ 547.802 Delegation of certain authorities by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13413 of October 27, 2006 (E.O. 13413), Executive Order 13671 of July 8, 2014, and any further Executive orders relating to the national emergency declared in E.O. 13413, may be taken by the Director of OFAC or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Dated: November 7, 2018.

Andrea Gacki,
Director, Office of Foreign Assets Control.

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